

Senate Study Bill 3271

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
GOVERNMENT OVERSIGHT BILL
BY CO=CHAIRPERSON WIECK)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to government accountability and concerning
2 service contract requirements, contractual requirements for
3 certain entities receiving public moneys, requirements for
4 joint agreements involving governmental entities, additional
5 review by the auditor of state, the authority of the citizens'
6 aide, establishment of a whistleblower board, and the
7 authority of the legislative oversight committee, and
8 including an implementation provision and making penalties
9 applicable.
10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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1 1 DIVISION I
1 2 GOVERNMENT ACCOUNTABILITY
1 3 Section 1. NEW SECTION. 8F.1 PURPOSE.
1 4 This chapter is intended to create mechanisms to most
1 5 effectively and efficiently monitor the utilization of public
1 6 moneys by providing the greatest possible accountability for
1 7 the expenditure of public moneys.
1 8 Sec. 2. NEW SECTION. 8F.2 DEFINITIONS.
1 9 As used in this chapter, unless the context otherwise
1 10 requires:
1 11 1. "Agency" means a unit of state government, which is an
1 12 authority, board, commission, committee, council, department,
1 13 examining board, or independent agency as defined in section
1 14 7E.4, including but not limited to each principal central
1 15 department enumerated in section 7E.5.
1 16 2. "Compensation" means payment of, or agreement to pay,
1 17 any money, thing of value, or financial benefit conferred in
1 18 return for labor or services rendered by an officer, employee,
1 19 or other person plus the value of benefits including but not
1 20 limited to casualty, disability, life, or health insurance,
1 21 other health or wellness benefits, vacations, holidays, and
1 22 sick leave, severance payments, retirement benefits, and
1 23 deferred compensation.
1 24 3. "Intergovernmental entity" means any separate
1 25 organization established in accordance with chapter 28E or
1 26 established by any other agreement between an agency and any
1 27 other governmental entity, whether federal, state, or local,
1 28 and any department, division, unit or subdivision thereof.
1 29 4. "Oversight agency" means an agency that contracts with
1 30 and disburses state or federal moneys to a recipient entity.
1 31 5. "Private agency" means an individual or any form of
1 32 business organization, including a nonprofit organization,
1 33 authorized under the laws of this state or any other state or
1 34 under the laws of any foreign jurisdiction.
1 35 6. "Recipient entity" means an intergovernmental entity or
2 1 a private agency that enters into a service contract with an
2 2 oversight agency to provide services which will be paid for
2 3 with local governmental, state, or federal moneys.
2 4 7. "Service" or "services" means work performed for an
2 5 oversight agency or for its client.
2 6 8. "Service contract" means a contract for a service or
2 7 services when the predominant factor, thrust, and purpose of
2 8 the contract as reasonably stated is for the provision of
2 9 services. When there is a contract for goods and services and

2 10 the predominant factor, thrust, and purpose of the contract as
2 11 reasonably stated is for the provision or rendering of
2 12 services with goods incidentally involved, a service contract
2 13 exists. "Service contract" includes grants when the
2 14 predominant factor, thrust, and purpose of the contract
2 15 formalizing the grant is for the provision of services.
2 16 "Service contract" does not include a contract that involves
2 17 transportation services or the construction, reconstruction,
2 18 improvement, repair, or maintenance of the transportation
2 19 system. For purposes of this chapter, a service contract only
2 20 exists when an individual service contract or a series of
2 21 service contracts entered into between an oversight agency and
2 22 a recipient entity exceeds five hundred thousand dollars or
2 23 when the grant or contract together with other grants or
2 24 contracts awarded to the recipient entity by the oversight
2 25 agency during the oversight agency's fiscal year exceeds five
2 26 hundred thousand dollars in the aggregate.

2 27 Sec. 3. NEW SECTION. 8F.3 CONTRACTUAL REQUIREMENTS.

2 28 1. As a condition of entering into a service contract with
2 29 an oversight agency, a recipient entity shall certify that the
2 30 recipient has the following information available for
2 31 inspection by the oversight agency and the legislative
2 32 services agency:

2 33 a. Information documenting the legal status of the
2 34 recipient entity, such as agreements establishing the entity
2 35 pursuant to chapter 28E or other intergovernmental agreements,
3 1 articles of incorporation, bylaws, or any other information
3 2 related to the establishment or status of the entity. In
3 3 addition, the information shall indicate whether the recipient
3 4 entity is exempt from federal income taxes under section
3 5 501(c)(3), of the Internal Revenue Code.

3 6 b. Information regarding the training and education
3 7 received by the members of the governing body of the recipient
3 8 entity relating to the duties and legal responsibilities of
3 9 the governing body.

3 10 c. Information regarding the procedures used by the
3 11 governing body of the recipient entity to do all of the
3 12 following:

3 13 (1) Review the performance of management employees and
3 14 establish the compensation of those employees.

3 15 (2) Review the recipient entity's internal controls
3 16 relating to accounting processes and procedures.

3 17 (3) Review the recipient entity's compliance with the
3 18 laws, rules, regulations, and contractual agreements
3 19 applicable to its operations.

3 20 (4) Information regarding adopted ethical and professional
3 21 standards of operation for the governing body and employees of
3 22 the recipient entity and information concerning the
3 23 implementation of these standards and the training of
3 24 employees and members of the governing body on the standards.
3 25 The standards shall include but not be limited to disclosure
3 26 of familial relationships among employees and between
3 27 employees and members of the governing body, policies
3 28 regarding nepotism and conflicts of interest, standards of
3 29 responsibility and obedience to law, fairness, and honesty.

3 30 d. Information regarding any policies adopted by the
3 31 governing body of the recipient entity that prohibit taking
3 32 adverse employment action against employees of the recipient
3 33 entity who disclose information about a service contract to
3 34 the oversight agency, the auditor of state, or the office of
3 35 citizens' aide and that state whether those policies are
4 1 substantially similar to the protection provided to state
4 2 employees under section 70A.28. The information provided
4 3 shall state whether employees of the recipient entity are
4 4 informed on a regular basis of their rights to disclose
4 5 information to the oversight agency, the office of citizens'
4 6 aide, the auditor of state, or the office of the attorney
4 7 general and the telephone numbers of those organizations.

4 8 2. The certification required by this section shall be
4 9 signed by an officer and director of the recipient entity, two
4 10 directors of the recipient entity, or the sole proprietor of
4 11 the recipient entity, whichever is applicable, and shall state
4 12 that the recipient entity is in full compliance with all laws,
4 13 rules, regulations, and contractual agreements applicable to
4 14 the recipient entity and the requirements of this chapter.

4 15 3. Prior to entering into a service contract with a
4 16 recipient entity, the oversight agency shall determine whether
4 17 the recipient entity can reasonably be expected to comply with
4 18 the requirements of the service contract. If the oversight
4 19 entity is unable to determine whether the recipient entity can
4 20 reasonably be expected to comply with the requirements of the

4 21 service contract, the oversight entity shall request such
4 22 information from the recipient entity as described in
4 23 subsection 1 to make a determination. If the oversight agency
4 24 determines from the information provided that the recipient
4 25 entity cannot reasonably be expected to comply with the
4 26 requirements of the service contract, the oversight agency
4 27 shall not enter into the service contract.

4 28 Sec. 4. NEW SECTION. 8F.4 REPORTING REQUIREMENTS.

4 29 1. As a condition of continuing to receive state or
4 30 federal moneys through an oversight agency for a service
4 31 contract, a recipient entity shall file an annual report with
4 32 the oversight agency and with the legislative services agency
4 33 within ten months following the end of the recipient entity's
4 34 fiscal year. However, if the information otherwise required
4 35 to be included in an annual report described in subsection 2
5 1 is otherwise reported to the oversight agency pursuant to
5 2 federal or state statutes or rules, the recipient entity shall
5 3 not be required to submit the annual report. The information
5 4 otherwise required to be included in an annual report shall be
5 5 filed with the recipient entity and with the legislative
5 6 services agency.

5 7 2. The annual report required to be filed pursuant to this
5 8 section shall contain the following:

5 9 a. Financial information relative to the expenditure of
5 10 state and federal moneys for the prior year pursuant to the
5 11 service contract. The financial information shall include but
5 12 is not limited to budget and actual revenue and expenditure
5 13 information for the year covered.

5 14 b. Financial information relating to service contracts
5 15 with the oversight agency during the preceding year, including
5 16 the costs by category to provide the services contracted for
5 17 and the cost per unit of service provided under the service
5 18 contract.

5 19 c. Reportable conditions in internal control reports or
5 20 material noncompliance with provisions of laws, rules,
5 21 regulations, or contractual agreements included in external
5 22 audit reports of the recipient entity received during the
5 23 preceding year.

5 24 d. Corrective action taken or planned by the recipient
5 25 entity in response to reportable conditions in internal
5 26 control reports or material noncompliance with laws, rules,
5 27 regulations, or contractual agreements included in external
5 28 audit reports received during the preceding year.

5 29 e. Any changes in the information submitted in accordance
5 30 with section 8F.3.

5 31 f. A certification signed by an officer and director of
5 32 the recipient entity, two directors of the recipient entity,
5 33 or the sole proprietor of the recipient entity, whichever is
5 34 applicable, stating the annual report is accurate and the
5 35 recipient entity is in full compliance with all laws, rules,
6 1 regulations, and contractual agreements applicable to the
6 2 recipient entity and the requirements of this chapter.

6 3 3. In addition to the reports otherwise required to be
6 4 filed pursuant to this section, a recipient entity shall be
6 5 required to submit such supplemental information as requested
6 6 by the oversight agency or the legislative services agency
6 7 relating to the entity's expenditure of state and federal
6 8 moneys.

6 9 4. The oversight agency shall file a copy of each service
6 10 contract in an electronic format with the department of
6 11 administrative services.

6 12 Sec. 5. NEW SECTION. 8F.5 ENFORCEMENT.

6 13 Any service contract awarded to a recipient entity shall
6 14 provide that the oversight agency may terminate the service
6 15 contract if the recipient entity, during the duration of the
6 16 contract, fails to comply with the requirements of this
6 17 chapter. In addition, the service contract shall provide a
6 18 mechanism for the forfeiture and recovery of state or federal
6 19 funds expended by a recipient entity in violation of the laws
6 20 applicable to the expenditure of the money or the requirements
6 21 of the service contract and this chapter.

6 22 Sec. 6. Section 8.47, Code 2005, is amended by adding the
6 23 following new subsection:

6 24 NEW SUBSECTION. 5. Each department or establishment
6 25 executing a service contract shall file a copy of the service
6 26 contract in an electronic format with the department of
6 27 administrative services.

6 28 Sec. 7. Section 8E.203, Code 2005, is amended to read as
6 29 follows:

6 30 8E.203 STRATEGIC PLAN == PURPOSES.

6 31 The purposes of strategic plans are to promote long-term

6 32 and broad thinking, focus on results for Iowans, and guide the
6 33 allocation of human and material resources and day-to-day
6 34 activities. To promote these purposes and because agencies
6 35 are accountable for public resources entrusted to the
7 1 agencies, strategic plans must include a description of the
7 2 methods agencies will use to determine how public resources
7 3 are used in accordance with applicable laws, rules,
7 4 regulations, and contractual agreements to achieve acceptable
7 5 public benefits.

7 6 Sec. 8. Section 8E.208, Code 2005, is amended by adding
7 7 the following new unnumbered paragraph:

7 8 NEW UNNUMBERED PARAGRAPH. Performance measurement is
7 9 essential to ensuring adequate accountability over public
7 10 resources and the exchange of public resources for desirable
7 11 and acceptable public benefits. Performance measurement must
7 12 include an assessment of whether agencies have adequate
7 13 control procedures in place, and whether those control
7 14 procedures are operating effectively, to determine that
7 15 agencies are receiving or providing services of adequate
7 16 quality, public resources are being used effectively and
7 17 efficiently, and public resources are being used for
7 18 appropriate and meaningful activities.

7 19 Sec. 9. Section 28E.5, Code 2005, is amended by adding the
7 20 following new subsections:

7 21 NEW SUBSECTION. 7. That the entity created shall comply
7 22 with the requirements of chapters 21 and 22 to the same extent
7 23 as the requirements are applicable to the public agencies of
7 24 the state that entered into the agreement creating the entity.

7 25 NEW SUBSECTION. 8. That the entity created shall make
7 26 available to the public all compensation paid by the entity to
7 27 employees of the entity created.

7 28 Sec. 10. IMPLEMENTATION PROVISION.

7 29 1. This division of this Act applies to service contracts
7 30 entered into or renewed by an oversight agency, as those terms
7 31 are defined in section 8F.2 as created in this division of
7 32 this Act, on or after October 1, 2006.

7 33 2. The section of this division of this Act amending Code
7 34 section 28E.5 is applicable on or after July 1, 2006.

7 35 DIVISION II
8 1 AUDITOR OF STATE DUTIES

8 2 Sec. 11. Section 11.36, Code 2005, is amended by striking
8 3 the section and inserting in lieu thereof the following:

8 4 11.36 REVIEW OF ENTITIES RECEIVING PUBLIC MONEYS.

8 5 1. The auditor of state may, at the request of a
8 6 department, review the audit working papers prepared by a
8 7 certified public accountant covering the receipt and
8 8 expenditure of state or federal funds provided by the
8 9 department to any other entity to determine if the receipt and
8 10 expenditure of those funds by the entity is consistent with
8 11 the laws, rules, regulations, and contractual agreements
8 12 governing those funds. Upon completion of the review, the
8 13 auditor of state shall report whether, in the auditor of
8 14 state's judgment, the auditor of state believes the certified
8 15 public accountant's working papers adequately demonstrate that
8 16 the laws, rules, regulations, and contractual agreements
8 17 governing the funds have been substantially complied with. If
8 18 the auditor of state does not believe the certified public
8 19 accountant's working papers adequately demonstrate that the
8 20 laws, rules, regulations, and contractual agreements have been
8 21 substantially complied with or believes a complete or partial
8 22 reaudit is necessary based on the provisions of section 11.6,
8 23 subsection 4, paragraph "a", "b", or "c", the auditor of state
8 24 shall notify the certified public accountant and the
8 25 department of the actions the auditor of state believes are
8 26 necessary to determine that the department is in substantial
8 27 compliance with those laws, rules, regulations, and
8 28 contractual agreements. The auditor of state may assist
8 29 departments with actions to determine that the department is
8 30 in substantial compliance. Departments shall reimburse the
8 31 auditor of state for the cost of the review and any subsequent
8 32 assistance provided by the auditor of state.

8 33 2. The auditor of state may, at the request of a
8 34 department, review the records covering the receipt and
8 35 expenditure of state or federal funds provided by the
9 1 department to any other entity which has not been audited by a
9 2 certified public accountant to determine if the receipt and
9 3 expenditure of those funds by the entity is consistent with
9 4 the laws, rules, regulations, and contractual agreements
9 5 governing those funds. Upon completion of the review, the
9 6 auditor of state shall report whether, in the auditor of
9 7 state's judgment, the auditor of state believes the entity

9 8 adequately demonstrated that the laws, rules, regulations, and
9 9 contractual agreements governing the funds have been
9 10 substantially complied with. If the auditor of state does not
9 11 believe the entity adequately demonstrated that the laws,
9 12 rules, regulations, and contractual agreements have been
9 13 substantially complied with, the auditor of state shall notify
9 14 the department of the actions the auditor of state believes
9 15 are necessary to determine that the department is in
9 16 substantial compliance with those laws, rules, regulations,
9 17 and contractual agreements. The auditor of state may assist a
9 18 department with actions to determine that the department is in
9 19 substantial compliance. Departments shall reimburse the
9 20 auditor of state for the cost of the review and any subsequent
9 21 assistance provided by the auditor of state.
9 22 3. When, in the auditor of state's judgment, the auditor
9 23 of state finds that sufficient information is available to
9 24 demonstrate that an entity receiving state or federal funds
9 25 from a department may not have substantially complied with the
9 26 laws, rules, regulations, and contractual agreements governing
9 27 those funds, the auditor of state shall notify the department
9 28 providing those funds to the entity of the auditor of state's
9 29 finding. The department shall cooperate with the auditor of
9 30 state to establish actions to be taken to determine whether
9 31 substantial compliance with those laws, rules, regulations,
9 32 and contractual agreements has been achieved by the entity
9 33 receiving the state or federal funds from the department.
9 34 Departments shall reimburse the auditor of state for any
9 35 actions taken by the auditor of state to determine whether the
10 1 entity has substantially complied with the laws, rules,
10 2 regulations, and contractual agreements governing the funds
10 3 provided by the department for costs expended after the date
10 4 the auditor of state notifies the department of an issue
10 5 involving substantial compliance pursuant to the requirements
10 6 of this subsection.

10 7 DIVISION III
10 8 CITIZENS' AIDE DUTIES

10 9 Sec. 12. Section 2C.1, subsection 2, Code 2005, is amended
10 10 to read as follows:

10 11 2. a. "Agency" means ~~all governmental entities,~~
~~10 12 departments, boards, commissions, councils or institutions, a~~
~~10 13 department, board, commission, council, institution, or other~~
~~10 14 governmental body of the state or a political subdivision of~~
~~10 15 the state, a legal or administrative entity created pursuant~~
~~10 16 to chapter 28E, a private entity providing individualized or~~
~~10 17 public services under a contract with a governmental body of~~
~~10 18 the state or a political subdivision of the state, and any~~
10 19 officer, employee, or member thereof acting or purporting to
10 20 act in the exercise of official duties, ~~but it or providing~~
10 21 ~~services enumerated in a contract.~~

10 22 b. "Agency" does not include mean:

- 10 23 ~~a. (1)~~ Any court or judge or appurtenant judicial staff.
10 24 ~~b. (2)~~ The members, committees, or permanent or temporary
10 25 staffs of the Iowa general assembly.
10 26 ~~c. (3)~~ The governor of Iowa or the governor's personal
10 27 staff.
10 28 ~~d. (4)~~ Any instrumentality formed pursuant to an
10 29 interstate compact and answerable to more than one state.

10 30 Sec. 13. Section 2C.9, subsection 1, Code 2005, is amended
10 31 to read as follows:

10 32 1. Investigate, on complaint or on the citizens' aide's
10 33 own motion, any administrative action of any agency, without
10 34 regard to the finality of the administrative action, except
10 35 that the citizens' aide shall not investigate the complaint of
11 1 an employee of an agency in regard to that employee's
11 2 employment relationship with the agency except as otherwise
11 3 provided by this section. A communication or receipt of
11 4 information made pursuant to the powers prescribed in this
11 5 chapter shall not be considered an ex parte communication as
11 6 described in the provisions of section 17A.17.

11 7 Sec. 14. Section 2C.9, Code 2005, is amended by adding the
11 8 following new subsections:

11 9 NEW SUBSECTION. 7. Provide administrative and
11 10 investigative assistance to the whistleblower board
11 11 established in section 2E.1.
11 12 NEW SUBSECTION. 8. Provide information to state employees
11 13 and their employers relating to the rights of employees to
11 14 disclose information under section 8A.417, subsection 4, and
11 15 section 70A.28, subsection 1 or 2.

11 16 Sec. 15. NEW SECTION. 2E.1 INDEPENDENT WHISTLEBLOWER
11 17 BOARD == ESTABLISHED == DUTIES.

11 18 1. An Iowa whistleblower board is established as an

11 19 independent agency within the office of citizens' aide. The
11 20 board shall administer this chapter and investigate complaints
11 21 and conduct hearings relating to the disclosure of information
11 22 by state employees as governed by sections 8A.417 and 70A.28.
11 23 2. The board shall consist of three members, who shall not
11 24 be state employees or employees of an entity receiving state
11 25 funds, and shall be balanced as to political affiliation as
11 26 provided in section 69.16. One member shall be appointed by
11 27 the legislative council, one member shall be appointed by the
11 28 majority leader of the senate in consultation with the
11 29 minority leader of the senate, and one member shall be
11 30 appointed by the speaker of the house in consultation with the
11 31 minority leader of the house.
11 32 3. Members shall serve at the pleasure of the appointing
11 33 authority but in no event for longer than a two-year term
11 34 which shall expire upon the convening of the following general
11 35 assembly, or when the appointee's successor is appointed,
12 1 whichever occurs later. A member of the board may be
12 2 reappointed to serve additional terms on the board.
12 3 4. The board shall annually elect one member to serve as
12 4 the chairperson of the board and one member to serve as vice
12 5 chairperson. The vice chairperson shall act as the
12 6 chairperson in the absence or disability of the chairperson or
12 7 in the event of a vacancy in that office.
12 8 5. Members of the board shall receive a per diem as
12 9 specified in section 7E.6 while conducting business of the
12 10 board, and payment of actual and necessary expenses incurred
12 11 in the performance of their duties.
12 12 6. The office of the citizens' aide shall provide
12 13 administrative and legal support to the board.
12 14 7. The board shall adopt rules pursuant to chapter 17A as
12 15 necessary to carry out the purposes of this chapter.
12 16 Sec. 16. NEW SECTION. 2E.2 COMPLAINT PROCEDURES.
12 17 1. A state employee who is discharged, suspended, demoted,
12 18 or otherwise reduced in pay and who believes the disciplinary
12 19 action was in violation of section 8A.417, subsection 4, or
12 20 section 70A.28, subsection 1 or 2, may appeal the disciplinary
12 21 action to the board created in section 2E.1 within thirty days
12 22 following the effective date of the action. The board shall
12 23 prescribe and provide complaint forms for this purpose. A
12 24 complaint must include the name and address of the
12 25 complainant, a statement of the facts believed to be true that
12 26 form the basis of the complaint, including the sources of
12 27 information and approximate dates of the action alleged, and a
12 28 certification by the complainant under penalty of perjury that
12 29 the facts stated to be true are true to the best of the
12 30 complainant's knowledge.
12 31 2. The board staff shall review the complaint to determine
12 32 if the complaint is sufficient as to form. If the complaint
12 33 is deficient as to form, the complaint shall be returned to
12 34 the complainant with a statement of the deficiency and an
12 35 explanation describing how the deficiency may be cured. If
13 1 the complaint is sufficient as to form, the complaint shall be
13 2 referred for legal review.
13 3 3. Unless the chairperson of the board concludes that
13 4 immediate notification would prejudice a preliminary
13 5 investigation or subject the complainant to an unreasonable
13 6 risk, the board shall mail a copy of the complaint to the
13 7 subject of the complaint within three working days of the
13 8 acceptance of the complaint. If a determination is made by
13 9 the chairperson not to mail a copy of the complaint to the
13 10 subject of the complaint within the specified three working
13 11 days, the board shall approve and establish the time and
13 12 conditions under which the subject will be informed of the
13 13 filing and contents of the complaint.
13 14 4. Upon completion of legal review, the chairperson of the
13 15 board shall be advised whether, in the opinion of the legal
13 16 advisor, the complaint states an allegation which is legally
13 17 sufficient. A legally sufficient allegation must allege facts
13 18 that would establish a violation of section 8A.417, subsection
13 19 4, or section 70A.28, subsection 1 or 2.
13 20 5. If the board determines that none of the allegations
13 21 contained in the complaint are legally sufficient, the
13 22 complaint shall be dismissed. The complainant shall be sent a
13 23 notice of dismissal stating the reason or reasons for the
13 24 dismissal. If a copy of the complaint was sent to the subject
13 25 of the complaint, a copy of the notice of dismissal shall be
13 26 sent to the subject of the complaint. If the board determines
13 27 that any allegation contained in the complaint is legally
13 28 sufficient, the complaint shall be referred to the board staff
13 29 for investigation of any legally sufficient allegations.

13 30 6. The purpose of an investigation by the board's staff is
13 31 to determine whether there is probable cause to believe that
13 32 there has been a violation of section 8A.417, subsection 4, or
13 33 section 70A.28, subsection 1 or 2. To facilitate the conduct
13 34 of investigations, the board may issue and seek enforcement of
13 35 subpoenas requiring the attendance and testimony of witnesses
14 1 and subpoenas requiring the production of books, papers,
14 2 records, and other real evidence relating to the matter under
14 3 investigation. Upon the request of the board, an appropriate
14 4 county attorney or the attorney general shall assist the staff
14 5 of the board in its investigation.

14 6 7. If the board determines on the basis of an
14 7 investigation by board staff that there is probable cause to
14 8 believe the existence of facts that would establish a
14 9 violation of section 8A.417, subsection 4, or section 70A.28,
14 10 subsection 1 or 2, the board may issue a statement of charges
14 11 and notice of a contested case proceeding to the complainant
14 12 and to the person who is the subject of the complaint, in the
14 13 manner provided for the issuance of statements of charges
14 14 under chapter 17A. If the board determines on the basis of an
14 15 investigation by staff that there is no probable cause to
14 16 believe that a violation has occurred, the board shall close
14 17 the investigation, dismiss any related complaint, and the
14 18 person making the complaint and the subject of the complaint
14 19 shall be notified of the dismissal.

14 20 8. At any stage during the investigation or after the
14 21 initiation of a contested case proceeding, the board may
14 22 approve a settlement regarding an alleged violation. Terms of
14 23 a settlement shall be reduced to writing and be available for
14 24 public inspection. An informal settlement may provide for any
14 25 remedy specified in section 2E.4. However, the board shall
14 26 not approve a settlement unless the board determines that the
14 27 terms of the settlement are in the public interest and are
14 28 consistent with the purposes of section 8A.417, subsection 4,
14 29 and section 70A.28, subsection 1 or 2.

14 30 9. A complaint shall be a public record, but some or all
14 31 of the contents may be treated as confidential under section
14 32 22.7, subsection 18, as if the complainant were a person
14 33 outside of government, to the extent necessary under
14 34 subsection 3 of this section. If the complainant, the person
14 35 who provides information to the board, or the person who is
15 1 the subject of an investigation publicly discloses the
15 2 existence of an investigation, the board may publicly confirm
15 3 the existence of the disclosed formal complaint or
15 4 investigation and, in the board's discretion, make the
15 5 complaint or the informal referral public, as well as any
15 6 other documents that were issued by the board to any party to
15 7 the investigation. However, investigative materials may be
15 8 furnished to the appropriate law enforcement authorities by
15 9 the board at any time. Upon the commencement of a contested
15 10 case proceeding by the board, all investigative material
15 11 relating to that proceeding shall be made available to the
15 12 subject of the proceeding. The entire record of any contested
15 13 case proceeding initiated under this section shall be a public
15 14 record.

15 15 Sec. 17. NEW SECTION. 2E.3 CONTESTED CASE PROCEEDINGS.

15 16 1. Contested case proceedings initiated as a result of a
15 17 complaint filed with the whistleblower board under this
15 18 chapter shall be conducted in accordance with the requirements
15 19 of chapter 17A. A preponderance of the evidence shall be
15 20 required to support a finding that a person has violated
15 21 section 8A.417, subsection 4, or section 70A.28, subsection 1
15 22 or 2. The case in support of the statement of charges shall
15 23 be presented at the hearing by one of the board's attorneys or
15 24 staff unless, upon the request of the board, the charges are
15 25 prosecuted by another legal counsel designated by the attorney
15 26 general.

15 27 2. Hearings held pursuant to this chapter shall be heard
15 28 by a quorum of the board, unless the board designates a board
15 29 member or an administrative law judge to preside at the
15 30 hearing. If a quorum of the board does not preside at the
15 31 hearing, the board member or administrative law judge shall
15 32 make a proposed decision. The board or presiding board member
15 33 may be assisted by an administrative law judge in the conduct
15 34 of the hearing and the preparation of a decision.

15 35 3. Upon a finding by the board that the party charged has
16 1 violated section 8A.417, subsection 4, or section 70A.28,
16 2 subsection 1 or 2, the board may impose any penalty provided
16 3 for by section 2E.4. Upon a final decision of the board
16 4 finding that the party charged has not violated section
16 5 8A.417, subsection 4, or section 70A.28, subsection 1 or 2,

16 6 the complaint shall be dismissed and the party charged and the
16 7 original complainant, if any, shall be notified.

16 8 4. The right of an appropriate county attorney or the
16 9 attorney general to commence and maintain a district court
16 10 prosecution for criminal violations of the law is unaffected
16 11 by any proceedings under this section.

16 12 5. The board shall adopt rules, pursuant to chapter 17A,
16 13 establishing procedures to administer this section.

16 14 Sec. 18. NEW SECTION. 2E.4 PENALTIES == RECOMMENDED
16 15 ACTIONS.

16 16 1. The board, after a hearing and upon a finding that a
16 17 violation of section 8A.417, subsection 4, or section 70A.28,
16 18 subsection 1 or 2, has occurred, may do one or more of the
16 19 following:

16 20 a. Issue an order requiring the violator to cease and
16 21 desist from the violation found and to take any remedial
16 22 action deemed appropriate by the board.

16 23 b. Reinstate the aggrieved state employee, with or without
16 24 back pay, and provide such other equitable relief the board
16 25 deems appropriate, including the awarding of any attorney fees
16 26 and costs.

16 27 2. At any stage during an investigation, the board may
16 28 resolve the matter by admonishment to the alleged violator or
16 29 by any other means not specified in subsection 1 as a
16 30 posthearing remedy.

16 31 3. If a person fails to comply with an action of the board
16 32 under subsection 1, the board may petition the Polk county
16 33 district court for an order for enforcement of the action of
16 34 the board. The enforcement proceeding shall be conducted as
16 35 provided in section 2E.5.

17 1 Sec. 19. NEW SECTION. 2E.5 JUDICIAL REVIEW ==
17 2 ENFORCEMENT.

17 3 Judicial review of the actions of the board may be sought
17 4 in accordance with chapter 17A. Judicial enforcement of
17 5 orders of the board may be sought in accordance with chapter
17 6 17A.

17 7 Sec. 20. Section 70A.28, subsection 5, Code 2005, is
17 8 amended to read as follows:

17 9 5. ~~Subsection Subsections 1 and 2 may be enforced through~~
17 10 ~~a civil action filing a complaint with the whistleblower board~~
17 11 ~~as provided in chapter 2E.~~

17 12 ~~a. A person who violates subsection 2 is liable to an~~
17 13 ~~aggrieved employee for affirmative relief including~~
17 14 ~~reinstatement, with or without back pay, or any other~~
17 15 ~~equitable relief the court deems appropriate, including~~
17 16 ~~attorney fees and costs.~~

17 17 ~~b. When a person commits, is committing, or proposes to~~
17 18 ~~commit an act in violation of subsection 2, an injunction may~~
17 19 ~~be granted through an action in district court to prohibit the~~
17 20 ~~person from continuing such acts. The action for injunctive~~
17 21 ~~relief may be brought by an aggrieved employee or the attorney~~
17 22 ~~general.~~

17 23 DIVISION IV

17 24 LEGISLATIVE OVERSIGHT

17 25 Sec. 21. Section 2.45, subsection 5, Code 2005, is amended
17 26 by adding the following new paragraph:

17 27 NEW PARAGRAPH. c. The committee shall implement a
17 28 systematic process of reviewing the reports required to be
17 29 filed with the legislative services agency pursuant to section
17 30 8F.4.

17 31 EXPLANATION

17 32 This bill concerns governmental accountability. The bill
17 33 contains provisions governing service contracts that expend
17 34 government funds, the authority of the auditor of state to
17 35 review entities receiving state or federal funds, and the
18 1 authority of the citizens' aide (ombudsman) to receive
18 2 complaints relative to private entities providing services
18 3 under contract with a governmental entity and employment=
18 4 related complaints concerning disclosures of information, and
18 5 the authority of the legislative oversight committee.

18 6 Division I of the bill concerns government accountability
18 7 relating to service contracts and oversight requirements for
18 8 agencies subject to the accountable government Act in Code
18 9 chapter 8E.

18 10 New Code chapter 8F establishes requirements governing any
18 11 service contract between a governmental entity and an
18 12 intergovernmental or private entity that involves federal or
18 13 state funds.

18 14 New Code section 8F.2 defines "oversight agency" as any
18 15 state unit or state government that contracts with and
18 16 disburses government money to a recipient entity for a service

18 17 contract. The bill defines a "service contract" as one
18 18 primarily for services in which the value of the contract or
18 19 contracts exceeds \$500,000. The bill also defines a
18 20 "recipient entity" as an intergovernmental entity or private
18 21 agency that receives local governmental, state, or federal
18 22 moneys from an oversight agency on a service contract.
18 23 New Code section 8F.3 provides information a recipient
18 24 entity shall certify that it can make available to the
18 25 oversight agency as a condition of entering into a service
18 26 contract with an oversight agency. The bill requires that the
18 27 information include documentation as to the governance of the
18 28 entity, provision of training to the governing body of the
18 29 entity as to its duties and obligations as a governing body,
18 30 information relative to the performances and compensation of
18 31 management employees and accounting practices, ethical and
18 32 professional standards for the entity including provisions on
18 33 nepotism and conflicts of interest, and a whistleblower policy
18 34 consistent with rules governing state employees. The new Code
18 35 section also requires the recipient entity to certify that the
19 1 entity is in full compliance with all applicable laws and
19 2 regulations including the requirements of this new Code
19 3 chapter.

19 4 New Code section 8F.4 provides additional ongoing
19 5 requirements for a recipient entity. The Code section
19 6 requires the recipient entity to submit an annual report to
19 7 the oversight agency as well as to the legislative services
19 8 agency which must include financial information, any
19 9 information concerning any external audits conducted in the
19 10 previous year, as well as any changes in the information
19 11 required pursuant to new Code section 8F.3. The new Code
19 12 section provides an exception to this annual report
19 13 requirement if the recipient entity is already required to
19 14 submit similar information pursuant to statute or rule so long
19 15 as this information is also submitted to the legislative
19 16 services agency. The new Code section further provides that
19 17 the recipient entity certify the accuracy of the information
19 18 in the annual report and provide supplemental information to
19 19 the oversight agency or the legislative services agency upon
19 20 request.

19 21 New Code section 8F.5 provides that an oversight agency has
19 22 the authority to terminate any contract if the recipient
19 23 entity fails to comply with the requirements of this new Code
19 24 chapter and that the contract contain provisions providing for
19 25 the recovery of government moneys expended if the entity fails
19 26 to comply.

19 27 Code section 8.47 is amended to provide that all service
19 28 contracts executed by a department be filed in an electronic
19 29 format with the department of administrative services.

19 30 Code section 8E.203, concerning strategic plans under the
19 31 accountable government Act, is amended to provide that
19 32 strategic plans include a description of methods agencies will
19 33 use to determine how public resources are used to achieve
19 34 public benefits.

19 35 Code section 8E.208, concerning performance measurements,
20 1 is amended to provide that performance measurements include an
20 2 assessment of whether agencies have adequate control
20 3 procedures as to whether public resources are being used
20 4 effectively.

20 5 Code section 28E.5, concerning requirements for entities
20 6 created under that chapter, is amended to provide that the
20 7 entity created shall comply with the requirements of Code
20 8 chapters 21 (open meetings) and 22 (public records) to the
20 9 same extent as the requirements are applicable to the public
20 10 agencies of the state that entered into the agreement creating
20 11 the entity. In addition, the entity is required to make all
20 12 salaries of employees public.

20 13 This division of the bill also provides that the
20 14 requirements for service contracts apply to such contracts
20 15 entered into or renewed on or after October 1, 2006.

20 16 Division II of the bill concerns the authority of the
20 17 auditor of state to conduct reviews of entities receiving
20 18 state or federal funds.

20 19 Code section 11.36 is stricken and rewritten and provides
20 20 that the auditor of state may, at the request of a department
20 21 or upon a determination by the auditor of state, review
20 22 information, and submit a report, covering the receipt and
20 23 expenditure of state or federal funds provided by a department
20 24 to any other entity to determine if the receipt and
20 25 expenditure of those funds by the entity is consistent with
20 26 the requirements governing those funds. The new Code section
20 27 provides that the applicable department reimburse the auditor

20 28 of state for the cost of providing the review required by this
20 29 section.

20 30 Division III of the bill expands the authority of the
20 31 office of citizens' aide. This division of the bill expands
20 32 the definition of the term "agency" within Code chapter 2C,
20 33 which governs the authority of the office of citizens' aide.
20 34 The division defines "agency" to include legal or
20 35 administrative entities created pursuant to Code chapter 28E,
21 1 private entities providing individualized or public services
21 2 pursuant to a contract with a governmental body of the state
21 3 or local government, and any officer, employee, or member of
21 4 any of those entities who is performing official duties or
21 5 providing services enumerated in a contract. The expansion of
21 6 the definition brings the activities of those entities and
21 7 individuals who are performing services pursuant to a contract
21 8 with state or local government under the jurisdiction of the
21 9 office of citizens' aide under Code section 2C.9.

21 10 In addition, Code section 2C.9, concerning the powers of
21 11 the citizens' aide, is amended to provide that the citizens'
21 12 aide provide administrative and investigative assistance to
21 13 the whistleblower board created by the bill and to provide
21 14 information to state employees and employers relative to the
21 15 rights of employees to disclose certain information.

21 16 New Code chapter 2E is created to establish a whistleblower
21 17 board.

21 18 New Code section 2E.1 establishes the whistleblower board
21 19 and provides that it is an independent agency within the
21 20 office of citizens' aide. The board shall investigate
21 21 complaints and conduct hearings relating to the disclosure of
21 22 certain information by state employees. The board consists of
21 23 three members none of whom shall be a state employee or an
21 24 employee of an entity receiving state funds. One member shall
21 25 be appointed by the legislative council, one member shall be
21 26 appointed by the majority leader of the senate in consultation
21 27 with the minority leader of the senate, and one member shall
21 28 be appointed by the speaker of the house in consultation with
21 29 the minority leader of the house. Members shall serve no
21 30 longer than a two-year term which shall expire at the
21 31 convening of the following general assembly. Members of the
21 32 board shall receive a per diem while conducting the business
21 33 of the board.

21 34 New Code section 2E.2 establishes the complaint procedure
21 35 for state employees who believe that adverse employment action
22 1 has been taken against them for disclosing information where
22 2 that action constitutes a violation of Code section 8A.417 or
22 3 70A.28. The section requires that an employee shall file a
22 4 complaint within 30 days of the adverse employment action.
22 5 The section provides that the board shall make an initial
22 6 determination as to the legal sufficiency of the complaint and
22 7 shall dismiss the complaint if it is not legally sufficient.
22 8 If the allegations are legally sufficient, the board shall
22 9 investigate the complaint. If after the investigation the
22 10 board determines there is probable cause that a violation has
22 11 occurred, the board shall conduct a contested case proceeding
22 12 relative to the complaint.

22 13 New Code section 2E.3 establishes the requirements of a
22 14 contested case proceeding conducted by the board and provides
22 15 that they shall be conducted in accordance with the
22 16 requirements of Code chapter 17A.

22 17 New Code section 2E.4 provides the penalties the board may
22 18 impose if a violation is found. The section allows the board
22 19 to order the violator to cease and desist from the violation
22 20 found and to reinstate the aggrieved employee with or without
22 21 back pay. The section also allows the board to grant any
22 22 other equitable relief.

22 23 New Code section 2E.5 allows for judicial review of the
22 24 board action in accordance with the requirements of Code
22 25 chapter 17A.

22 26 Code section 70A.28, subsection 5, is amended to require a
22 27 state employee to seek relief for a violation of this section
22 28 by filing a complaint with the whistleblower board created by
22 29 the bill. The bill strikes the ability to file a civil action
22 30 under this section for a violation.

22 31 Division IV of the bill provides that the oversight
22 32 committee of the legislative council review the annual
22 33 reports, or substitute reports, required to be filed by a
22 34 recipient entity pursuant to the requirements of Code section
22 35 8F.4 created in the bill.